

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Pending before the Court is the Motion to Dismiss, (ECF No. 15), filed by Defendants Citigroup, Inc. and Jeffrey Dunmire (“Defendants”). Plaintiff Gina Miceli (“Plaintiff”) filed a response, (ECF No. 20), and Defendants replied, (ECF No. 24). For the reasons set forth herein, the Motion to Dismiss will be **GRANTED**.

I. BACKGROUND

This case arises out of allegations that Defendant Citigroup, as Plaintiff’s employer, discriminated against Plaintiff due to her age and gender. (Compl., ECF No. 1). Plaintiff began her employment in or around 1993 as a banking professional with California Federal Bank, which was acquired by Defendant Citigroup in 2003. (*Id.* ¶ 17); (Pl’s Resp. 4:15-5:1, ECF No. 20). After the acquisition, Plaintiff worked for Defendant Citigroup as a branch manager until her termination on May 5, 2014. (Compl., ¶ 19). In her Complaint, Plaintiff argues that, despite Defendant Citigroup’s claim that she was terminated due to an ethical violation, her termination actually resulted from the desire of Defendant Citigroup and Defendant Dunmire, Plaintiff’s supervisor, to eliminate women and individuals over forty from the leadership of her branch. (*Id.* ¶¶ 53-54).

1 Based on these allegations, the Complaint sets forth claims for: (1) gender
2 discrimination in violation of Title VII, (2) tortious discharge, (3) defamation, (4) intentional
3 infliction of emotional distress, and (5) age discrimination in violation of the Age
4 Discrimination in Employment Act of 1967. (*Id.* ¶¶ 63-126).

5 In the instant Motion, Defendants argue that the Court should dismiss this action based
6 upon an arbitration policy detailed within Defendant Citigroup's employee handbook.
7 Defendants claim that Plaintiff received a web link to Defendant Citigroup's Employee
8 Handbook in December 2012 and electronically signed an acknowledgement receipt which set
9 forth the general terms of the arbitration policy. (2013 U.S. Employee Handbook
10 Acknowledgment Receipt, Ex. A-1 to Mot. to Dismiss, ECF No. 15). This acknowledgement
11 receipt stated:

12 When you click on the "I Acknowledge" button below, you are
13 acknowledging that:

14 You have opened the e-mail that directed you to this Web site.

15 You have received the Web link to the Employee Handbook.

16 You understand that it's your obligation to read the Handbook and
17 become familiar with its terms.

18 Appended to the Handbook is an Employment Arbitration Policy as
19 well as the "Principles of Employment" that require you and Citi to
20 submit employment-related disputes to binding arbitration (See
21 Appendix A and Appendix D). You understand that it is your
22 obligation to read these document carefully, and that no provision
in this Handbook or elsewhere is intended to constitute a waiver,
nor be construed to constitute a waiver, of your or Citi's right to
compel arbitration of employment-related disputes.

23 WITH THE EXCEPTION OF THE EMPLOYMENT
24 ARBITRATION POLICY, YOU UNDERSTAND THAT
25 NOTHING CONTAINED IN THIS HANDBOOK, NOR THE
HANDBOOK ITSELF, IS CONSIDERED A CONTRACT OF
EMPLOYMENT. IN ADDITION, NOTHING IN THIS

1 HANDBOOK CONSTITUTES A GUARANTEE THAT YOUR
2 EMPLOYMENT WILL CONTINUE FOR ANY SPECIFIED
3 PERIOD OF TIME. YOU UNDERSTAND THAT YOUR
4 EMPLOYMENT WITH CITI IS AT-WILL, WHICH MEANS IT
5 CAN BE TERMINATED BY YOU OR CITI AT ANY TIME,
6 WITH OR WITHOUT NOTICE, FOR NO REASON OR ANY
7 REASON NOT OTHERWISE PROHIBITED BY LAW.
8

9 (Id.). Plaintiff does not dispute that the acknowledgement receipt bears her electronic signature
10 and is dated December 5, 2012. (Id.). The arbitration policy is fully detailed within Defendant
11 Citigroup's 2013 employee handbook and provides, in relevant part:

12 This Policy applies to both you and to Citi, and makes arbitration
13 the required and exclusive forum for the resolution of all
14 employment-related disputes (other than disputes which by statute
15 are not subject to arbitration). . . .

16 Neutral arbitrator(s) shall be appointed in the manner provided by
17 AAA or FINRA rules, as applicable. However, it's Citi's intent that
18 arbitrators be diverse, experienced, and knowledgeable about
19 employment-related claims. . . .

20 Discovery requests shall be made pursuant to the rules of the AAA
21 or FINRA, as applicable. Upon request of a party, the arbitrator(s)
22 may order further discovery consistent with the applicable rules and
23 the expedited nature of arbitration. . . .

24 The arbitrator(s) shall be governed by applicable federal, state,
25 and/or local law. The arbitrator(s) may award relief only on an
individual basis. The arbitrator(s) shall have the authority to award
compensatory damages and injunctive relief to the extent permitted
by applicable law. The arbitrator(s) may award punitive or
exemplary damages or attorneys' fees where expressly provided by
applicable law.

(2013 U.S. Employee Handbook pp. 54-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15). Because
of this arbitration policy, Defendants assert that this case should be dismissed pending
arbitration, pursuant to the Federal Arbitration Act.

1 **II. LEGAL STANDARD**

2 Section 2 of the Federal Arbitration Act (the “FAA”) provides that:

3 A written provision in . . . a contract evidencing a transaction
 4 involving commerce to settle by arbitration a controversy thereafter
 5 arising out of such contract or transaction . . . shall be valid,
 6 irrevocable, and enforceable, save upon such grounds as exist at law
 7 or in equity for the revocation of any contract.

8 9 U.S.C. § 2. “In enacting § 2 of the [FAA], Congress declared a national policy favoring
 9 arbitration and withdrew the power of the states to require a judicial forum for the resolution of
 10 claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v.*
 11 *Keating*, 465 U.S. 1, 10 (1984). Courts place arbitration agreements “upon the same footing as
 12 other contracts.” *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489
 13 U.S. 468, 478 (1989).

14 Under the FAA, parties to an arbitration agreement may seek an order from the Court to
 15 compel arbitration. 9 U.S.C. § 4. The FAA “leaves no place for the exercise of discretion by a
 16 district court, but instead mandates that district courts *shall* direct the parties to proceed to
 17 arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter*
 18 *Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Thus, the Court’s “role under the [FAA] is . . .
 19 . limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)
 20 whether the agreement encompasses the dispute at issue.” *Lee v. Intelius, Inc.*, 737 F.3d 1254,
 21 1261 (9th Cir. 2013). If a district court decides that an arbitration agreement is valid and
 22 enforceable, then it should either stay or dismiss the claims subject to arbitration. *Nagrampa v.*
 23 *MailCoups, Inc.*, 469 F.3d 1257, 1276-77 (9th Cir. 2006).

24 **III. DISCUSSION**

25 In her Response, Plaintiff argues that the arbitration policy is unconscionable, and
 therefore invalid, because it was presented to Plaintiff nearly twenty years after she began her
 employment.

1 Nevada possesses a strong public policy in favor of arbitration, and arbitration clauses
2 are generally enforceable. *Gonski v. Second Judicial Dist. Court of State ex rel. Washoe*, 245
3 P.3d 1164, 1168 (Nev. 2010). “Nevertheless, courts may invalidate unconscionable arbitration
4 provisions.” *D.R. Horton, Inc. v. Green*, 96 P.3d 1159, 1162 (Nev. 2004); *see also Burch v.*
5 *Second Judicial Dist. Court of State ex rel. Washoe*, 49 P.3d 647, 650 (Nev. 2002).

6 “Generally, both procedural and substantive unconscionability must be present in order
7 for a court to exercise its discretion to refuse to enforce a clause as unconscionable.” *D.R.*
8 *Horton*, 96 P.3d at 1162 (citing *Burch*, 49 P.3d at 650). Accordingly, in assessing Plaintiff’s
9 arguments regarding the invalidity of the arbitration policy, the Court will first determine
10 whether the policy is procedurally unconscionable, and will then look to whether it is
11 substantively unconscionable.

12 **A. Procedural Unconscionability**

13 “An arbitration clause is procedurally unconscionable when a party has no meaningful
14 opportunity to agree to the clause terms either because of unequal bargaining power, as in an
15 adhesion contract, or because the clause and its effects are not readily ascertainable upon a
16 review of the contract.” *Gonski*, 245 P.3d at 1169. “Procedural unconscionability often
17 involves the use of fine print or complicated, incomplete or misleading language that fails to
18 inform a reasonable person of the contractual language’s consequences.” *D.R. Horton*, 96 P.3d
19 at 1162. In this case, it is apparent that the arbitration policy is not procedurally
20 unconscionable. Rather than being buried within Defendant Citigroup’s employee handbook or
21 presented in fine print, the general terms of the arbitration policy were made clear in the text of
22 the one-page acknowledgement receipt signed by Plaintiff. This document states: “Appended
23 to the Handbook is an Employment Arbitration Policy as well as the ‘Principles of
24 Employment’ that require you and Citi to submit employment-related disputes to binding
25 arbitration (See Appendix A and Appendix D).” (2013 U.S. Employee Handbook

1 Acknowledgment Receipt, Ex. A-1 to Mot. to Dismiss, ECF No. 15). Notably, this statement
2 also referenced the sections of the employee handbook containing the full text of the arbitration
3 policy, “Appendix A and Appendix D,” giving a clear indication as to where Plaintiff needed to
4 look if she wanted to learn more. Additionally, by signing this document, Plaintiff
5 acknowledged that she was obligated “to read the Handbook and become familiar with its
6 terms,” (*id.*), which included the arbitration policy. *See* (2013 U.S. Employee Handbook pp.
7 53-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15). Therefore, the Court finds that the arbitration
8 requirement was presented clearly and the terms of the arbitration policy were accessible to
9 Plaintiff at the time she signed the acknowledgement receipt.

10 Plaintiff also argues that the arbitration policy is procedurally unconscionable because it
11 was presented to her on a take-it-or-leave-it basis. However, “[t]he Nevada Supreme Court has
12 held that adhesion-contract analysis is inapplicable in the employment context.” *Hillgen-Ruiz v.*
13 *TLC Casino Enterprises, Inc.*, No. 2:14-cv-0437-APG-VCF, 2014 WL 5341676, at *6 (D. Nev.
14 Oct. 20, 2014). Indeed, in *Kindred v. Second Judicial Dist. Court ex rel. County of Washoe*, the
15 Nevada Supreme Court stated: “An adhesion contract is a standardized contract form offered to
16 consumers of goods and services essentially on a take it or leave it basis, without affording the
17 consumer a realistic opportunity to bargain. We have never applied the adhesion contract
18 doctrine to employment cases.” 996 P.2d 903, 907 (Nev. 2000). Therefore, pursuant to the
19 Nevada Supreme Court’s holding in *Kindred*, Plaintiff’s argument regarding the disparity in
20 bargaining power between herself and Defendant Citigroup is unavailing. Thus, the Court finds
21 that Plaintiff has failed to demonstrate that the arbitration policy at issue is procedurally
22 unconscionable.

23 **B. Substantive Unconscionability**

24 “Substantive unconscionability . . . is based on the one-sidedness of the arbitration
25 terms” and whether those terms are “oppressive.” *D.R. Horton*, 96 P.3d at 1162-63. In this

1 case, Plaintiff argues that the arbitration policy is substantively unconscionable because it could
2 be interpreted to apply retroactively to the date she began her employment. However,
3 assuming *arguendo* that the policy would apply retroactively, it nevertheless imposes the
4 arbitration requirement equally upon Defendant Citigroup and Plaintiff. The policy states:

5 This Policy applies to both you and to Citi, and makes arbitration
6 the required and exclusive forum for the resolution of all
7 employment-related disputes (other than disputes which by statute
8 are not subject to arbitration) which are based on legally protected
9 rights (i.e., statutory, regulatory, contractual, or common-law
10 rights) and arise between you and Citi, its predecessors, successors
and assigns, its current and former parents, subsidiaries, and
affiliates, and its and their current and former officers, directors,
employees, and agents.

11 (2013 U.S. Employee Handbook pp. 53-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15).

12 Therefore, even if the policy were construed to require that pre-existing claims be submitted to
13 arbitration, this requirement would equally bind Defendant Citigroup and Plaintiff, and thus
14 would not be substantively unconscionable. Accordingly, the Court finds that Plaintiff has
15 failed to show that the agreement at issue is either procedurally or substantively
16 unconscionable, and Defendants' Motion will be granted.

17 Upon finding that a plaintiff's claims are subject to an arbitration clause, the Court may
18 dismiss an action without prejudice instead of staying the action while the arbitration proceeds.
19 *Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 638 (9th Cir. 1988); *Stewart v. Dollar Loan*
20 *Ctr.*, LLC, No. 2:13-cv-0182-JCM-PAL, 2013 WL 3491254, at *4 (D. Nev. July 10, 2013). In
21 this case, the Court finds that dismissal is warranted because all of Plaintiff's claims are subject
22 to the arbitration policy.

23 **IV. CONCLUSION**

24 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss, (ECF No. 15), is
25 **GRANTED**.

1 **IT IS FURTHER ORDERED** that the Complaint is dismissed without prejudice
2 because Plaintiff must first comply with the terms of the relevant arbitration agreement. The
3 Clerk is instructed to enter judgment accordingly and close the case.

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5 **DATED** this 13 day of July, 2016.



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8 Gloria M. Navarro, Chief Judge
9 United States District Court

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